



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

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James S. Gilmore, III
Governor

John Paul Woodley, Jr.
Secretary of Natural Resources

Dennis H. Treacy
Director

(804) 698-4000
1-800-592-5482

November 12, 2001

Judson White, Ph.D.
Manager - Water/Waste Programs
Dominion Generation
5000 Dominion Boulevard
Glen Allen, Virginia 23060

**CERTIFIED MAIL
RETURN RECEIPT
REQUESTED**

RE: VWP Individual Permit Number 01-0964
Virginia Electric and Power Company, Bath County, Virginia
Final VWP Individual Permit

Dear Dr. White:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the project. The permit authorizes the operation of a pumped storage hydroelectric generating facility with releases to Back Creek and Little Back Creek in Bath County, Virginia.

The provisions and conditions contained therein according to § 401(a)(1) of the Clean Water Act requires that:

"any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge in the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act."

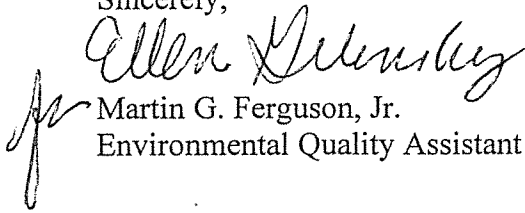
Dr. Judson White
Page 2 of 2

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 calendar days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§ 62.1-4.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in § 1.23(b) of the board's Procedural Rule Number 1. In cases involving actions of the board, such petition must be filed within 30 days after notice of such action is mailed to such owner by certified mail.

If you have any questions, please contact Mr. Joseph P. Hassell at (804) 698-4072.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martin G. Ferguson, Jr.", is written over the typed name.

Martin G. Ferguson, Jr.
Environmental Quality Assistant Division Director

Enclosures: Permit Cover Page, Part I – Special Conditions, Part II – General Conditions

cc: VWP permit file



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VWP Permit No. 01-0964

Effective Date: November 16, 2001

Expiration Date: November 16, 2016

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with Section 401 of the Clean Water Act as amended (33 USC 1251 et seq) and the State Water Control Law and regulations adopted pursuant thereto, the Board has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The Board finds that the effect of the impact together with other existing or proposed impacts, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

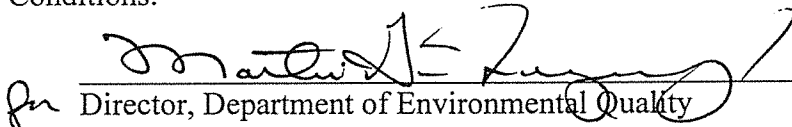
Permittee: Virginia Electric and Power Company

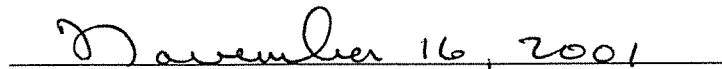
Address: 5000 Dominion Boulevard, Glen Allen, Virginia 23060

Activity Location: At the upper and lower reservoirs on Little Back Creek and Back Creek respectively for the VEPCO pumped storage hydroelectric generating facility near Sunrise in Bath County.

Activity Description: The operation of the pumped storage hydroelectric plant.

The authorized discharge shall be in accordance with this cover page, Part I - Special Conditions, Part II - General Conditions.


for Director, Department of Environmental Quality


Date November 16, 2001

SPECIAL CONDITIONS

1. Pursuant to Va. Code Ann. §62.1-44.15.5 and 9 VAC 25-210-10 this permit authorizes the operation of a pumped storage hydroelectric generating facility with releases from a reservoirs on Back Creek and Little Back Creek as indicated in the Joint Permit Application dated May 23, 2001 and received on May 30, 2001 and deemed complete on August 8, 2001.
2. Any additional impacts to State waters associated with this project may require modification of this permit and mitigation.
3. This permit expires 15 years from its date of issuance.
4. The permittee shall monitor on a daily basis the stream flow on Little Back Creek immediately below the upper reservoir and the streamflow on Back Creek immediately below the Lower Reservoir.
5. Except as allowed by conditions 6 or 7, as appropriate, the releases from the upper and lower reservoirs are subject to the following conditions:
 - a. The instantaneous release from the upper reservoir will be equal to or greater than 1.29 million gallons per day.
 - b. The daily average release from the lower reservoir will be greater than or equal to the difference between 9.69 million gallons and the daily average release from the upper reservoir. At no time will the lower reservoir release be less than 10 cfs.
6. Except as allowed by condition 7, if 50% of the 3200 acre-feet conservation pool has been depleted, then the daily average release from the lower reservoir will be 4.85 million gallons and will at no time be less than 6 cfs. The instantaneous release from the upper reservoir will be 1.29 million gallons per day.
7. If 80% of the 3200 acre-feet conservation pool has been depleted, then the daily average release from the lower reservoir will be 3.23 million gallons and at no time will be less than 4.0 cfs. The minimum release from the upper reservoir shall not be less than 1.5 cfs. If the conservation pool is completely depleted, the facility will consult with the DEQ and VDGIF to determine the necessary course of action.

8. The permittee shall file an annual monitoring report by January 31st of each year to demonstrate compliance with special conditions 5, 6 and 7 during the previous calendar year. The report shall contain the following information: for each day; the date, the percentage depletion of the conservation pool, the required and actual minimum release to Back Creek, the required and actual minimum release to Little Back Creek.
9. Within 60 days of permit issuance the permittee shall submit for DEQ approval a written description of the measuring points and measuring methodologies for measuring releases from the two reservoirs and the volume of the conservation pool remaining. The methodology shall be designed to yield data which are representative of the monitored activity.
10. Any report submitted in compliance with condition 8 must bear the applicant's signature or the signature of a person acting in the applicant's behalf, with the authority to bind the applicant.
11. Certification of reports. Any person signing the annual monitoring report shall include the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

PART II - GENERAL CONDITIONS

A. Duty to Comply

The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permittee of the duty to comply with all applicable Federal and State statutes, regulations and toxic standards and prohibitions. Any permit non-compliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

B. Mitigation Requirements

The permittee shall take all reasonable steps to:

1. Avoid all adverse environmental impact which could result from the activity;
2. Where avoidance is impractical, minimize the adverse environmental impact; and
3. Where impacts cannot be avoided, provide mitigation of the adverse impact on an in kind basis.

C. Reopener

This permit may be reopened to modify the conditions of the permit to meet new regulatory standards duly adopted by the Board. Causes for reopening permits include, but are not limited to:

1. When State law prohibits conditions in a permit which are more stringent than an applicable effluent limitation guideline;
2. When subsequently promulgated effluent guidelines are modified, and are based on best conventional pollutant control technology; or
3. When the circumstances on which the previous permit was based have materially and substantially changed, or special studies conducted by the Department or the permittee show material and substantial change since the time the permit was issued and thereby constitute cause for permit modification or revocation and reissuance.

D. Change in Management of Pollutants

All discharges and other activities authorized by this permit shall be made in accordance with the terms and conditions of this permit. The permittee shall submit a new application 180 days prior to any proposed modification to their activity which will:

1. Result in a significantly new or substantially increased discharge of dredged or fill material, or a significant change in the nature of the pollutants; or
2. Violate or lead to the violation of the terms and conditions of the permit or the Water Quality Standards of the Commonwealth.

E. Duty to Halt or to Reduce Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

F. Compliance with State and Federal Law

Compliance with this permit constitutes compliance with the Virginia Water Protection Permit requirements of the State Water Control Law. Nothing in this permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other State law or regulation or under the authority preserved by Section 510 of the Clean Water Act.

G. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

H. Severability

The provisions of this permit are severable.

I. Right of Entry

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

J. Transferability of Permits

This permit may be transferred to another person by a permittee if:

1. The current permittee notifies the Department of Environmental Quality 30 days prior to the proposed transfer of the title to the facility or property;
2. The notice of the proposed transfer includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and
3. The Department of Environmental Quality does not within the 30 day time period notify the existing permittee of the State Water Control Board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

K. Permit Modification

The permittee shall notify the Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the Department that said modification will not violate any conditions of this permit. If such demonstration cannot be made, the permittee shall apply for a modification of this permit. This permit may be modified when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of permit conditions that differ from those of the existing permit or are absent from it;
2. When new information becomes available about the operation or discharge covered by the permit which was not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance;
3. When a change is made in the promulgated standards or regulations on which the permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Clean Water Act;
5. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act;
6. When changes occur which are subject to "reopener clauses" in the permit;
7. When the Department of Environmental Quality determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use, the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to State Water Control Law Sections 62.1-242 through 253, during the term of the permit;

8. When the level of discharge of a pollutant not limited in the permit exceeds the level which can be achieved by available methodology for controlling such discharges;
9. When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application; or
10. When other states were not notified of the change in the permit and their waters may be affected by the discharge.

L. Permit Termination

This permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the permit;
2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by permit modification or termination; or
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge of dredged and fill material controlled by the permit.

M. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Unauthorized Discharge of Pollutants

Except in compliance with this permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or,
2. Otherwise alter the physical, chemical, or biological properties of such state surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.